



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Calculus, Inc.--Request for Reconsideration

File: B-230574.2

Date: May 2, 1988

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### DIGEST

Protest properly was dismissed for failure to timely comment on contracting agency's report, or otherwise express interest in the General Accounting Office's (GAO's) continued consideration of the case, where "reply" protester now says was mailed to "[our] organization" in fact was addressed to a Member of Congress, not GAO. A protester's obligation to advise the GAO of the protester's continuing interest in its case is not satisfied by the sending of correspondence to a Member of Congress, of which correspondence the GAO is not made aware.

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### DECISION

Calculus, Inc., has requested that we reconsider our April 21, 1988, dismissal of its protest for failure to timely respond to the contracting agency's report. Calculus maintains that it did timely respond and that our dismissal therefore was in error and its protest should be considered on the merits.

We affirm our dismissal.

On March 1, 1988, Calculus filed with us a protest against the proposed award of a contract to another bidder under invitation for bids No. 7-SI-21-00120/DC7732, issued by the Bureau of Indian Affairs, Department of the Interior, for certain repairs at Coolidge Dam, Arizona. Calculus contended that the apparent low bidder did not qualify as a labor-surplus-area concern and therefore was ineligible for award under this procurement, which was set aside for such concerns.

By notices dated March 2, we confirmed to Interior our telephonic request for a report on the matter and acknowledged to Calculus our receipt of its protest. In our acknowledgment notice to Calculus, we referred to our Bid Protest Regulations and advised the protester:

C42039/135716

". . . you are required within 10 working days of receipt of the report to submit written comments or to advise our Office that you wish to have the protest decided on the existing record. For your convenience, we have indicated the date the agency's report is due. Please notify our Office at that time if you do not receive the report since, unless we hear from you within ten working days of our receipt of the report, we will close our file without action."

At the top of the notice we indicated the report was due April 5.

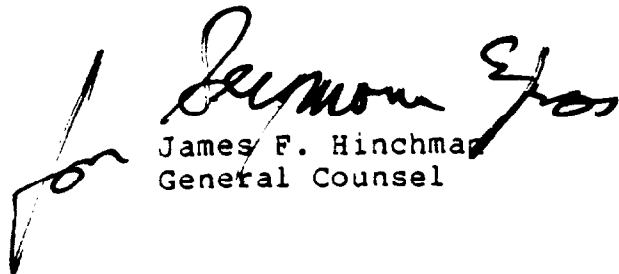
By letter dated March 16, a copy of which was sent to Calculus, Interior requested that we dismiss the protest without requiring a fully documented report on the basis that the protest was, on its face, without legal merit. We did not consider such a dismissal appropriate and advised Interior to submit a full report by the originally scheduled due date of April 5, which it did. On April 21, not having received any communication from the protester, we closed our file on the basis that the protester had failed to timely respond to Interior's report as required by our Regulations.

Calculus now states that our dismissal was in error because it replied to Interior's March 16 request for dismissal by letter "mailed regular mail to your organization on the 23rd of March 1988." It states it saw no need to reply to Interior's April 5 report because it regarded it only as "backup" or "documentation" for Interior's first submission.

What Calculus now submits as its March 23 comments mailed to "[our] organization" is a letter addressed to a Member of Congress. This letter concerns a Department of the Army procurement as well as this one. There is no indication in the letter that a copy of it was sent to us and we have no record of its receipt either from Calculus or from the Member.

Our Bid Protest Regulations, as reflected in the acknowledgment notice sent to the protester, contain very straightforward rules as to when and how a protester must express continued interest in its case in order to assure its consideration after we have received the contracting agency's report. Here, we received no communication of any kind from the protester during the comment period. A protester does not satisfy its obligation to advise us of its continued interest in a protest by addressing to a Member of Congress a letter of which we are not aware.

This protest file was properly closed and our dismissal is affirmed.

A handwritten signature in dark ink, appearing to read "James F. Hinchman". The signature is written in a cursive, flowing style. To the left of the signature, there is a large, stylized checkmark or the letter "P" drawn with the same pen.

James F. Hinchman  
General Counsel